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Opinion No. 01-043

Authority of General Sessions Court to Reduce Bail Amount

QUESTION

May a general sessions judge allow a defendant the option of posting a reduced cash bond with the clerk of court in lieu of the amount of the bail?

OPINION

No. When a person has been charged with a bailable offense, a general sessions judge is authorized by statute either to release that person on his or her own recognizance pursuant to Tenn. Code Ann. §§ 40-11-115 or -116, or to admit that person to bail pursuant to Tenn. Code Ann. §§ 40-11-117, -118, or -122. But, a court may not act as its own bondsman by allowing a defendant to deposit a reduced cash bond in lieu of the full amount of the bail.

ANALYSIS

In your question, you posited the following hypothetical: "The court sets a defendant's bail at \$1,000.00; but also allows the defendant - at the defendant's option - to deposit a \$100 cash bond with the clerk of the court in lieu of the \$1,000.00 bail amount." You asked this question in light of the Tennessee Court of Appeals decision in *Lewis Bail Bond Company v. General Sessions Court of Madison County*, No. C-97-62 (Tenn. App., filed November 12, 1997, at Jackson) (copy attached), and Tenn. Code Ann. §§ 40-11-118 and -122.

The situation presented to the Court of Appeals in *Lewis*, which implicated Tenn. Code Ann. §§ 40-11-118 and -122, is not applicable to the hypothetical suggested here. In *Lewis*, the Madison County General Sessions Court refused to accept bail by means other than a cash deposit. This action clearly violated Tenn. Code Ann. § 40-11-122, which provides that a defendant, in lieu of the bail deposit provided for in Tenn. Code Ann. § 40-11-118, may execute a bail bond secured by "real estate situated in Tennessee with nonexempt unencumbered equity owned by the defendant or the defendant's surety worth one and one-half (1 1/2) times the amount of the bail set."

Nothing in *Lewis* or Tenn. Code Ann. §§ 40-11-118 or -122 suggests that a court may allow a defendant to deposit a reduced cash bond once a bail amount has been determined. The trial court only has the authority, pursuant to Tenn. Code Ann. § 40-11-118, to set the bail as low as the court determines is necessary to assure the appearance of the defendant at future proceedings. However, once the bail amount has been determined pursuant to Tenn. Code Ann. § 40-11-118, a defendant may petition a court to reconsider its determination. Tenn. Code Ann. § 40-11-143.

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